Supreme Court, U. S.
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IN THE SUPREME COURT
OF THE UNITED STATES

October Term, 1975

No. 75-1531

OLIVER H. WHITE, Petitioner

v.

UNITED STATES OF AMERICA, Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE FOURTH CIRCUIT

REPLY BRIEF FOR PETITIONER

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The Government's Memorandum in Opposition contains several misstatements of fact to which Petitioner feels compelled to respond. At page 4 in footnote 3 of the Government's memorandum it is stated that, "Shortly after the jury began its deliberations it asked to be reinstructed on the issues of wilfulness and insanity (Supp. Tr. 57). The court thereupon reread the instructions, substantially as quoted above (Supp. Tr. 58-60)." This misstatement compromises the main thrust of Petitioner's primary allegation of error. When the jury returned and asked for further instruction, the

court gave a portion of same instruction as before but left out the part pertaining to specific intent. The omitted instruction was the only place where the court had made any attempt to explain to the jury the concept of justifiable excuse. The confusing language saying evil motive and bad purpose does not mean wicked or morally depraved had already minimized the jury's concept of the mens rea required for this offense, and it is easy to see how the jury could have believed that Petitioner's failure to file his income tax returns was caused by his mental and emotional state which of course would be an innocent justification for his failure tc file, yet the jury was unable to acquit him under the charge given since the instructions left the impression that they would have to find him insane to find him not guilty.

The Government argues that Petitioner has not made this argument before his brief in this Court. The record is replete with requests that the trial Court charge the jury using the language found in United States v. Murdock, 290 U.S. 398, 390, 54 S.Ct. 223, 226 (1933), including the terms "stubbornly, obstinately, perversely" (Supp. Tr. 55). Petitioner's counsel even interrupted motions on other cases in the trial Court while the jury was out so that he could implore the Court to include the appropriate language defining the state of mind required. (Supp. Tr. 61). Petitioner both at the trial and on appeal has taken the position that the trial Court's instructions on wilfulness did not properly define the state of mind required

for this offense, nor did they properly embody the concept of justifiable excuse. From the evidence of this case, the jury could have found that Petitioner's mental condition caused his failure to file, yet under the instructions given could have felt that this was not a justifiable excuse since it did not amount to insanity. Therefore, they could find the defendant guilty even though his failure to file was caused by an innocent reason.

The Government's memorandum at page 5, footnote 5, states that Petitioner has misplaced reliance on Bollenbach v. United States (326 U.S. 607, 66 S.Ct. 402, 90, L.ED. 350 (1946). Bollenbach is cited for the simple and obvious proposition that when the jury requests further charge on a subject, the trial court is obligated to give a full and complete charge on that subject. In this case, when the jury requested further instructions on wilfullness and insanity, the Judge failed to give any instruction embodying the concept of justifiable excuse and thereby did not give a full and complete charge on the subject.

For these reasons and for the reasons set forth in the Petition in this case, it is respectfully submitted that the Petition for a Writ of Certiorari should be granted.

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